



Review of Suitability of Bank Directors and Senior Managers

**Prudential Supervision Department
Document BS10**

Issued: March 2011

Ref #3168051

Applicants for bank registration – assessment of suitability of directors and senior managers

1. Section 73 of the Reserve Bank of New Zealand Act 1989 (the Act) requires that in determining applications for bank registration under section 70 of the Act, the Reserve Bank must have regard to the suitability for their positions of the applicant's directors and senior managers or proposed directors and senior managers. The standard considerations for suitability are integrity, skills and experience. These considerations are set out in the Reserve Bank document, *Statement of Principles: Bank Registration and Supervision (BSI)*. The Bank typically makes an assessment of these factors by reviewing the curriculum vitae, criminal record information (if any), and assessments supplied by other supervisors and regulators (as appropriate).
2. The Reserve Bank's policy in respect of suitability, when considering registration applications, applies to:
 - in the case of locally incorporated applicants, existing or proposed directors, the existing or proposed chief executive officer and existing and proposed executives who report directly to the chief executive officer; and
 - in the case of overseas incorporated applicants, existing directors, and the existing or proposed chief executive of the New Zealand operations.

In this document, these persons are referred to as nominated office-holders.

3. The Reserve Bank assessment includes checks on whether there is any evidence to suggest that nominated office-holders are not suitable for their positions. This is in the nature of a negative assurance. It is not a positive affirmation of suitability. The primary responsibility for ensuring that office-holders have the requisite skills, experience, and integrity to carry out their tasks lies with the shareholders (for director appointments) and with the board (for senior management appointments), not with the Reserve Bank.
4. If a nominated office-holder has already been subject to a foreign supervisory or regulatory authority's suitability assessment, the Reserve Bank will ask the foreign authority for that assessment, and may accept a positive or neutral assessment as sufficient evidence of suitability. In making the decision whether to accept the suitability assessment of a foreign authority, the Reserve Bank may consider:
 - the adequacy of the fit and proper requirements of the foreign authority's country;
 - whether the foreign authority's assessment included criminal history checks; and
 - whether the foreign authority's suitability assessment is dated.

5. If a nominated office-holder has been resident overseas, the Reserve Bank will take into consideration any convictions for dishonesty offences or any other offences of a serious nature in those jurisdictions in which the nominated office-holder has been resident.
6. If the nominated office-holder has ever lived in New Zealand, any convictions in New Zealand for dishonesty offences, or any other offences of a serious nature, will be taken into consideration (subject to the provisions of the Criminal Records (Clean Slate) Act 2004).
7. If considered relevant by the Reserve Bank, the views of other New Zealand supervisory or regulatory agencies will be sought.
8. The curriculum vitae of all nominated office-holders will be reviewed to assess their individual skills and experience.
9. The Reserve Bank will also assess the suitability of the skills and experience of the board of directors as a whole. The board will be expected to have members with a range of relevant skills and experience for being directors of a bank, and to avoid having an undue concentration of particular skills and experience among directors.
- 9A. The Reserve Bank imposes on locally-incorporated banks a number of requirements relating to corporate governance. These are set out in the Reserve Bank document *Corporate Governance (BS14)*, and will normally be imposed by conditions of registration on the applicant from the date that it is registered.
- 9B. One standard requirement is that the chairperson of a registered bank must be independent as defined in BS14. A director does not normally qualify as independent if he or she sits on the board of a holding company or parent bank of the registered bank. However, if this is the case for the proposed chairperson of the applicant, this may not disqualify him or her from being independent, taking into account the considerations set out in BS14.
- 9C. There is also a requirement for the bank's board to have a minimum number of independent directors. A director of a registered bank will not be regarded as being independent if he or she is also on the board of a sister company of the bank, unless the Reserve Bank is satisfied that their independence is not compromised by that cross-directorship. If the applicant has any proposed director whom it wishes to treat as independent to meet the requirements of BS14, but who holds one or more sister company directorships, it will need to seek confirmation from the Reserve Bank that those directorships do not disqualify him or her from being independent.
- 9D. The applicant should inform the Reserve Bank if either of the situations described in paragraphs 9B and 9C arises, and the Reserve Bank will consider the issue of independence alongside the general consideration of the director's suitability. It will initially use the information supplied as required for considering their suitability, but may need to seek additional information in determining whether the director's independence would be compromised in his

or her specific circumstances. In both cases, the Reserve Bank will only confirm whether or not the parent company or sister company directorship (as applicable) rules out the director's independence. It will remain the applicant's responsibility to satisfy itself that the proposed director meets the criteria for independence in all other respects.

Registered bank conditions of registration – post-registration appointment of chairperson, directors and senior managers

10. Conditions of registration for locally incorporated banks include a requirement that no appointment of any director, chief executive officer, or executive who reports to, or is accountable directly to, the chief executive officer, may be made in respect of the registered bank, and no person may be appointed as chairperson of the board of the bank¹, unless the Reserve Bank has been supplied with a copy of the curriculum vitae of the proposed appointee and has advised that it has no objection to that appointment.
11. Conditions of registration for overseas incorporated banks include a requirement that no appointment of any New Zealand chief executive shall be made unless the Reserve Bank has been supplied with a copy of the curriculum vitae of the proposed appointee and has advised that it has no objection to that appointment.
12. In determining whether it has any objections, the Reserve Bank will typically go through the same process as is carried out when assessing bank registration applications, as outlined in paragraphs 1 to 9 above. When it is proposed to appoint an existing director as chairperson, it will not normally be necessary to repeat the background checks carried out when the director was first appointed, but an up-to-date curriculum vitae is always required.
- 12A. In the case of a proposed appointment to chairperson where the appointee will also sit on the board of a parent bank or holding company, the Reserve Bank will confirm whether or not it objects to the appointment for that reason, in line with paragraphs 9B and 9D above.
- 12B. In the case of a proposed appointment of an independent director where the appointee will also be director of a sister company, the Reserve Bank will confirm whether or not the sister directorship disqualifies the director from being independent, in line with paragraphs 9C and 9D above.

Information to be provided to the Reserve Bank on directors and senior managers

13. The information and documentation listed below is to be provided by, or on behalf of, each nominated office-holder.
 - Up-to-date curriculum vitae.

¹ For a number of banks, the condition in relation to chairperson appointments does not come into effect until 1 April 2012.

- If the nominated office-holder has ever lived in New Zealand, an up-to-date copy of their New Zealand criminal record (subject to the provisions of the Criminal Records (Clean Slate) Act 2004), or verification that no criminal record information is held, as issued to the nominated office-holder by the New Zealand Ministry of Justice.
 - If the nominated office-holder has ever been resident overseas, but has not been subject to a foreign supervisory or regulatory authority's suitability assessment, copies of up-to-date criminal record reports from those jurisdictions in which the nominated office-holder has been resident. Note that the Reserve Bank may also make its own inquiries directly with relevant overseas authorities.
 - Written consent for the Reserve Bank to make enquiries about the nominated office-holder with any relevant supervisory or regulatory authority, in New Zealand or overseas, as the Reserve Bank considers necessary to establish the suitability of the nominated office-holder.
14. Nominated office-holders who have lived in New Zealand will need to apply to the New Zealand Ministry of Justice for a criminal convictions report (subject to the provisions of the Criminal Records (Clean Slate) Act 2004). This would then be provided to the Reserve Bank by the nominated office-holder, or the registered bank or applicant with the consent of the nominated office-holder. A criminal convictions report can be obtained by the nominated office-holder from the New Zealand Ministry of Justice by applying to the Ministry on its form *Priv/F1 – Request by Individual*. A copy of this form can be obtained on-line from the Ministry's website at:
<http://www.justice.govt.nz/privacy/request-by-individual.pdf>.
15. After the Reserve Bank has received and reviewed the appropriate documents and information, it will decide whether it has any objection to the proposed appointment and communicate that to the registered bank or applicant. In the cases set out in paragraphs 9B and 9C, the Reserve Bank will also confirm whether or not the nominated office-holder is disqualified from being treated as independent for the purposes of the corporate governance policy.
16. Any information obtained by the Reserve Bank under this process will be retained by the Reserve Bank and treated as confidential under section 105 of the Act.